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IN THE

UNITED STATES SUPREME COURT

October Term, 1982

AMERICAN TRUCKING ASSOCIATIONS, INC.,
AND
STEAMSHIP OPERATORS INTERMODAL COMMITTEE, et al.,
Petitioners

v.

THOMAS D. LARSON, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THOMAS D. LARSON, et al., IN OPPOSITION

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STATEMENT

On June 10, 1981, the Honorable R. Dixon Herman of the District Court for the Middle District of Pennsylvania, in an action brought by Petitioner American Trucking Associations, Inc. ("Petitioner ATA") and Petitioner Steamship Operators Intermodal Committee ("Petitioner SOIC"), declared 75 Pennsylvania Consolidated Statutes Section 4703(a)(2) ("Section 4703(a)(2)") unconstitutional and permanently enjoined its enforcement. Section 4703(a)(2) provides in part:

> (2) No motor carrier vehicle shall be operated on a highway unless it displays a currently valid certificate of inspection issued under this chapter or by another state.

Section 102 of Title 75 (75 Pa. C.S. 102) defines "motor vehicle carrier" as:

> A truck, truck trailer or combination having a gross weight or registered gross weight in excess of 17,000 pounds.

Thomas D. Larson, Secretary, Pennsylvania Department of Transportation, *et al.* ("Respondents"), appealed to the Court of Appeals for the Third Circuit, which on July 20, 1982, reversed the decision of the District Court. In an opinion authored by the Honorable Dolores K. Sloviter, the Court of Appeals stated that the lower court did not apply a proper standard of review but based its decision on "whether the evidence presented by the Commonwealth *convinced it* that inspections were desirable." (Emphasis added) ATA-SOIC A. 26.[1]

The District Court erred by imposing upon Respondents the burden of proving that all uninspected motor carrier vehicles are unsafe vehicles. ATA-SOIC A. 27. This burden was far in

1. Citations ("ATA-SOIC A.") are to Appendix for Petitioners, American Trucking Associations, Incorporated, *et al*, and Steamship Operators Intermodal Committee, To Petition For a Writ of Certiorari to the United States Court of Appeals for the Third Circuit".

Citations ("A") are to pages in the Joint Appendix in the Court of Appeals.

excess of the degree of proof required under the appropriate commerce clause analysis standard and greatly exceeded Respondents' proposition that some, but not all, uninspected vehicles have mechanical defects which contribute to accidents and which defects are discoverable and correctable by periodic inspections.

The District Court misunderstood and misapplied Respondents' evidence. The District Court erroneously assumed that if between 40% and 60% of selectively and randomly inspected motor carrier vehicles have vehicle defects of a caliber necessitating their being placed out of service by the Bureau of Motor Carrier Safety while only 8.8% of all motor carrier vehicles involved in accidents had mechanical defects as accident causal factors, then no relationship exists between the occurrences of these accidents and the occurrences of mechanical defects. The Court of Appeals rejected this assumption. ATA-SOIC A. 22. Rather, the 8.8% figure (a figure understated by perhaps a factor of 3) and "other exhibits introduced by the truckers themselves" showed the correlation between accidents and mechanical defects. ATA-SOIC A. 26-27. Furthermore, Respondents' showed that the inspection program will correct and prevent mechanical defects by detecting the effects of mechanical deterioration and failure before a final stage of failure occurs. ATA-SOIC A. 24-25.

In light of these showings, the Court of Appeals could not but conclude that in the absence of discrimination–which was lacking here–and in the presence of an impact on commerce stemming merely from an inspection requirement, Section 4703(a)(2) contributed to highway safety and the Pennsylvania Legislature had a reasonable basis to so believe. ATA-SOIC A. 27-28.

On August 3, 1982, Petitioners filed Petitions for Rehearing which where denied on August 13, 1982, by the Court of Appeals en banc.

REASONS FOR DENYING THE WRIT

Section 4703(a)(2) is a valid highway safety measure consistent with this Court's judgments on free and fair trade. This statute imposes an inspection requirement on all motor carrier vehicles (*i.e.* large trucks and combinations weighing in excess of 17,000 lbs.) which traverse Pennsylvania highways. The statute is non-discriminatory in intent and application, and is consistent with federal regulations encouraging states to promote highway safety through periodic vehicle inspection programs. The record establishes, as the opinion of the Court of Appeals denotes, that Section 4703(a)(2) fosters readily observable highway safety benefits.

Petitioners err by their suggestion that this case offers an "unrestricted opportunity" for this Court to clarify the standard for dormant commerce clause analysis. The record afforded here would enable Section 4703(a)(2) to pass constitutional muster as permissible highway safety legislation under those standards of review appearing in this Court's recent opinions. Furthermore, this case falls beyond those three (3) isolated instances relied upon by Petitioners where this Court invalidated highway safety regulations.

A. Section 4703(a)(2) is Permissible Highway Safety Legislation Under Standards for Dormant Commerce Clause Analysis.

This Court has traditionally viewed highway safety legislation with deference. Unlike persons, state legislation is not created equally and highway safety legislation, enacted pursuant to a state's police powers, is accorded a higher degree of judicial deference than other enactments. *Bibb v. Navajo Freight Lines, Incorporated*, 359 U.S. 520, 522-23 (1959). This safety legislation carries a "strong presumption of validity" when challenged in court and challengers face a severe task to overcome it. *Raymond Motor Transportation, Incorporated v. Rice*, 434 U.S. 429, 444 (1978). Highway safety legislation is within the category of legislation least amenable to attack on constitutional grounds.

In recent years, this Court has reviewed the extent of permissible state regulation of interstate commerce under the dormant commerce clause. Respondents admit that some

ambivalence exists in this Court's treatment of the issue and that differing standards have emerged, *e.g.* "the non-illusory safety interest" test which is satisfied by a showing of a colorable impact on safety, and the "local interest balanced against impediment to commerce" test which combines traditional language of deference with an examination of the benefits and burdens of the state regulation.

Respondents believe that the former test is the proper standard, but suggest that Section 4703(a)(2)– legislation non-discriminatory in intent and application–poses sufficient safety benefits to pass either standard. While the Court of Appeals acknowledged that its judgment in upholding Section 4703(a)(2)'s constitutionality was fashioned under the "non-illusory safety interest" test, Section 4703(a)(2) would have survived had its safety benefits been weighed against its impact on commerce.

Respondents produced sufficient evidence to support their claim that the Pennsylvania Legislature had a reasonable basis to believe that periodic inspection of motor vehicles benefit highway safety. A discernable relationship exists between mechanical defects in motor carrier vehicles, which mechanical defects are discoverable and correctable by periodic inspections, and the occurrence of accidents.

> Pennsylvania introduced a broad array of evidence designed to show that the statute was indeed a valid safety measure. The Commonwealth introduced evidence that: national and local accident statistics show a significant increase in the number of accidents involving motor carrier vehicles; in inspections of interstate motor carrier vehicles on Pennsylvania highways conducted by the BMCS with the assistance of the Pennsylvania State Police, a significant percentage of the vehicles were found to have defects which warranted their being placed out of service; in comparison to all motor vehicles, motor carrier vehicles (large trucks etc.) are involved in a disproportionately large number of accidents in Pennsylvania for which vehicle failure is a factor contributing to the accident. In Pennsylvania factors such as geography, climate, roadway design and topography interrelate to create special safety problems for truck travel upon Pennsylvania roads. Penn-

> sylvania's inspection program is designed to and will correct and prevent mechanical failure and deterioration. And, there is a relationship between low incidence of mechanical defects and periodic inspection. Citations omitted. Court of Appeals Opinion at ATA-SOIC A. 20-21.

Furthermore, Respondents showed:

> (1) that mechanical failures generally are slow and progressive in nature and that very few of the failures are instantaneous, and (2) that although the precise point of mechanical failure is not predictable, "the effects of this deterioration and failure [can] be detected by an inspection", and (3) that the Commonwealth's program will detect, correct and prevent failure and deterioration "before they reach the final stage of failure." Citations omitted. Id. at ATA-SOIC A. 24-25.

The record, replete with evidence on Section 4703(a)(2)'s safety benefits, sets this case off distinctly from *Bibb* and *Raymond, supra*, and *Kassel v. Consolidated Freightways Corportation* 450 U.S. 662 (1981), where the various states failed to make even a "colorable showing" that their legislation contributed to safety.[2] Unlike the plaintiffs in the aforementioned instances, Petitioners failed to offer any credible evidence that non-inspected motor carrier vehicles were as safe as or safer than or had fewer mechanical defects than had inspected vehicles.

Petitioner ATA seeks to mislead this Court by its allegations on the safety issue. Petitioner ATA suggests that Section 4703(a)(2) will worsen the risk of accidents as motor carrier vehicles leave the interstate system in search of inspection stations. This suggestion emphasizes Petitioners' misunderstanding of Section 4703(a)(2)'s incidental, through permis-

2. Petitioner ATA's second argument–a suggestion that the Court of Appeals enunciated a new commerce analysis standard marked by an irrebutable presumption in support of a state's safety justification for a statute–is at odds with the analysis followed by the court and its reliance upon the many showings of Section 4703(a)(2)'s safety benefits in the record.

sible, impact on commerce. Petitioner ATA ignores the showings that inspections are at the most a twice a year occurrence; that Respondents will accept inspections performed by sister states; that a network of approximately 1000 inspection stations capable of inspecting motor carrier vehicles existed throughout Pennsylvania in close proximity to major highways in 1980 at the time of the District Court hearing, and this number would surely increase as need dictated; and that any additional mileage which may be incurred by uninspected vehicles on Pennsylvania highways as they sought inspection facilities would be de minimus in comparison to the mileage traversed by these vehicles if uninspected.

Petitioner ATA suggests that Section 4703(a)(2) was conceived by the Pennsylvania Legislature without any regard for safety because Petitioner ATA was not able to discover legislative debate on the issue. But, as this Court has noted, legislative silence is not to be equated with legislative ignorance or disregard. *South Carolina State Highway Department v. Barnwell*, 303 U.S. 177, 191 (1938).

Petitioner ATA suggests that two of Respondents' surveys (designed to compare the frequency of mechanical defects in vehicles from non-inspection and inspections states) were contrived subsequent to the filing of Petitioners' complaints. Petitioner ATA omits to add that the Survey of Equipment Violations of Vehicles Carrying Hazardous Substances (A. 1175) was culled from data in Respondents' files collected prior to the filing of this action, and these data show that uninspected motor carrier vehicles transporting hazardous substances on Pennsylvania highways evidenced higher rates of out-of-service violations, major violations and total violations (14%, 29% and 7% respectively) than did inspected vehicles transporting similar cargo. A. 990-91, 1267.

B. This Case Is Not The Issue of *Bibb*, *Raymond*, and *Kassel*.

In its last thirty terms, this Court has struck down highway safety legislation in only three instances: *Bibb*, *Raymond*, and *Kassel*, *supra*. Factors which compelled this Court to act were showings that state legislation irreconcilably conflicted with that of sister states (*Bibb*, *supra*), states aggressively pursued parochial interests at the expense of national commerce (*Kassel*,

supra), a maze of statutory exemptions negated the alleged safety rationale underlying the statutes *(Raymond, supra)*, and enforcement would bar whole categories of vehicles and commerce from a state's territory *(Bibb, Raymond, Kassel, supra)*. None of these concerns are present in this case. Moreover, the record establishes that Section 4703(a)(2) is consistent with principles of free and fair trade, federal inspection regulations and highway safety enhancement.

Section 4703(a)(2) applies equally to all motor carrier vehicles traversing Pennsylvania highways regardless of state of registration. Unlike the Illinois regulations in *Bibb*, Section 4703(a)(2) does not conflict with the laws of any other state. Indeed, 26 states and the District of Columbia enforce vehicle inspection programs. Unlike the Wisconsin and Iowa regulations in *Raymond* and *Kassel* respectively, Section 4703(a) is free from that "maze of exemptions" which benefit local interests. *All* Pennsylvania regulated motor carrier vehicles are subject to inspection. Section 4703(a)(2) neither bars uninspected vehicles from Pennsylvania highways nor forces truckers to modify the structure and mechanical components of their vehicles upon entry to the state. Section 4703(a)(2) imposes an inspection requirement only. Indeed, truckers can comply with this requirement via inspections in those other states and the District of Columbia with inspection programs or by inspection in Pennsylvania.

Section 4703(a)(2) does not discriminate in favor of local industry. Far from imposing a burden upon out-of-state vehicles not imposed on Pennsylvania registered vehicles, Section 4703 (a)(2) merely equalizes the burden on both classes of vehicles. Petitioner ATA's reliance on *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333 (1977) illustrates, as the Court of Appeals noted, Petitioner's misapprehension of the discrimination issue. Court of Appeal's Opinion, f.n. 10 at ATA-SOIC A. 25.

It is erroneous to assume that Section 4703(a)(2) merely requires inspections additional to those required under the inspection program of the federal Bureau of Motor Carrier Safety ("BMCS"). The BMCS Program is underfunded, undermanned, readily ignored, and, when enforced, reaches only those vehicles which fall within a narrowly drawn definition of interstate commerce. BMCS inspection guidelines are so vague

as to be meaningless.[3]

Truck drivers–it is the drivers who are expected to enforce these guidelines–lack mechanical expertise, inspection equipment and facilities to correct defects, but have no lack of employer pressures to ignore the guidelines and get rolling. It is not surprising that pursuant to selective and random BMCS roadside inspections, between 40% and 60% of these truck driver inspected vehicles are found to be "hazardous and placed out of service." ATA-SOIC A. 22.

The failures of the BMCS Program have not gone unnoticed. United States Congressman Walgren testified that ". . . the federal government is just not in a position – nor has it been in a position – to effectively deter violations of these [BMCS] standards or keep the system together" (A. 930).

Far from being a mere incident to the BMCS program, Section 4703(a)(2) stands as the only effective means by which Respondents can protect highway users from motor carrier vehicles with mechanical defects. Section 4703(a)(2) actually enforces the federal quest for a national commerce policy that "[e]ach state shall have a periodic inspection of all registered vehicles. . .". 23 CFR 1204.4, Highway Safety Program Standard No. 1 (1981).[4]

C. Summary

Respondents suggest that this case is not the vehicle through which this Court may clarify the standard for review in

3. Compare, for example, the BMCS guidelines codified at 49 CFR 392.7 with the scope and detail of Respondents' inspection requirements as described at A. 634-42.

4. Petitioner SOIC suggests that the Court of Appeals erred on two other accounts– *i.e.*, the Court exceeded its powers by substituting its own findings of fact without *stating* that those of the District Court were clearly erroneous, and by depriving the Petitioner of his property right of operating commercial vehicles on a state highway without due process of law. On the first point, a reading of the Court of Appeals's opinion is sufficient to show that the District Court's findings were found to be clearly erroneous, unsupported by and against the weight of the evidence. On the second point, the use of state highways by Petitioner's commercial vehicles is not a property right and Petitioner's citations (SOIC's Brief at P. 12) do not support the contention that it is.

dormant commerce clause cases. The record is replete with sufficient evidence to show Section 4703(a)(2) does contribute to highway safety and would pass any of this Court's commerce analysis standards. Section 4703(a)(2) is non-discriminatory in intent and application, provides significant safety benefits far exceeding any de minimus impact on commerce, and furthers the federal quest for a national commerce policy that the states have periodic inspection programs.

CONCLUSION

The petition for a writ of certiorari should be denied.

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